163-694

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. ~~947~~. 70

163-694

JOHN F. McGLENSEY, APPELLANT,

vs.

JAMES VAN VRANKEN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

FILED DECEMBER 5, 1891.

(14935.)

THE LAW ASSOCIATION OF PHILADELPHIA.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 347.

JOHN F. McGLENSEY, APPELLANT,

vs.

JAMES VAN VRANKEN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

INDEX.

	Original.	Print.
Caption	1	1
Petition for writ of habeas corpus	1	1
Order granting writ of habeas corpus	4	2
Writ of habeas corpus	4	2
Marshal's return	5	2
Return to writ of habeas corpus	6	3
Exhibit. Letter of acting Secretary of the Navy to the Attorney-General, October 15, 1891	7	4
Regulations relating to Pay Department, U. S. Navy	9	5
Appointment of Van Vranken as paymaster's clerk	10	5
Acceptance and agreement of Van Vranken	11	6
Oath of Van Vranken	12	6
Order of Acting Secretary of the Navy, August 5, 1891	13	7
Charges and specifications	15	7
Findings of court-martial	26	13
Opinion of Judge Hughes'	29	14
Order discharging petitioner, etc	37	17
Bond of petitioner	38	18
Order revoking allowance of writ of error	39	18
Petition for appeal	39	18
Assignment of errors	40	19
Order allowing appeal	44	21
Form of a writ of error	45	21
Citation	46	22
Marshal's return	47	22
Clerk's certificate	48	22

1 In the circuit court of the United States for the eastern district of Virginia.

Ex parte: James Van Vranken on petition for writ of habeas corpus.

Be it remembered, that heretofore, to wit, on the 17th day of October, A. D. 1891, came the petitioner, James Van Vranken, and presented to the circuit court of the United States for the eastern district of Virginia his petition for the writ of habeas corpus, which petition, together with the affidavit thereto and the order of the court thereon, is as follows, to wit:

Petition.

In the circuit court of the United States for the eastern district of Virginia.

To the Hon. the Judges of the United States circuit court for the eastern district of Virginia.

The petition of James Van Vranken, of the city of Philadelphia, in the State of Pennsylvania, respectfully shows:

First. That on or about the 10th day of August, 1891, your petitioner was ordered to appear before a naval-general court-martial convened by the honorable Secretary of the Navy of the United States, at the navy-yard, Norfolk, Virginia, to answer to certain charges and specifications of wrong-doing in the discharge of his duties as clerk to Edward Bellows, a paymaster in the Navy of the United States.

2 Secondly. That in obedience to said order your petitioner appeared before said court-martial and pleaded not guilty to the several charges and specifications then made and read to him; and that thereupon from day to day, the trial proceeded until the 17th of day August, 1891, when the said court-martial found him guilty of certain of the charges and specifications.

Thirdly. That on the said 17th day of August, A. D. 1891, the court passed sentence upon your petitioner, made a record thereof in their proceedings, and transmitted the sentence to the said the honorable Secretary of the Navy of the United States at Washington, D. C., after the members of the court had affixed their signatures thereto.

Fourthly. That the sentence of the said court was that your petitioner, James Van Vranken, paymaster's clerk in the United States Navy, be confined and imprisoned in such penitentiary for the period of one year as the honorable Secretary of the Navy of the United States may designate, and to lose all pay that may become due, except two dollars a month for necessary prison expenses, and fifty dollars to be paid him at the expiration of his confinement, and then to be dishonorably discharged from the service of the United States, making a total loss of pay twelve hundred and twenty-three 60/100 dollars ($1,223.60).

Fifthly. And your petitioner further represents that he was not amenable to trial by court-martial nor subject to the jurisdiction of said court, and that the proceedings of said court were without warrant of law and void.

Sixthly. That the sentence of the said court, confining your peti-
3 tioner to confinement in such penetentiary as the Secretary of the Navy shall designate and to a loss of pay, except two dollars a

month and fifty dollars at the expiration of imprisonment, is not authorized by law and is utterly null and void.

Seventhly. That your petitioner is now and has been since the said finding and sentence held and confined on the United States ship "Franklin," at the said Norfolk navy-yard, and within the jurisdiction of this honorable court, and under the custody of Captain John F. McGlensey, commander of said ship, awaiting removal to such penetentiary as the Secretary of the Navy shall select, and thus restrained of his liberty in violation of the Constitution and laws of the United States.

Eighthly. Your petitioner has made every effort in his power to procure from the Navy Department at Washington certified copies of the proceedings, findings, and sentence of said court-martial, with a view and for the purpose of vouching them with and making them a part of this, his petition, and without avail.

Whereupon, your petitioner prays that a writ of habeas corpus issue, directed to the said John F. McGlensey, commander of the said ship "Franklin," commanding him to produce your petitioner before this honorable court at the city of Norfolk, at such time as the court shall direct, and that he there show cause of your petitioner's detention, to the end that your petitioner may be discharged from custody.

JAMES VAN VRANKEN.

Affidavit on foregoing petition.

On this 9th day of October, 1891, personally appeared before me, H. S. Ackiss, a United States commissioner in and for the eastern
4 district of Virginia, James Van Vranken, whose name is above subscribed, and made oath that the statements contained in the foregoing petition are true to the best of his knowledge and belief.

[SEAL] H. S. ACKISS,

U. S. Circuit Court Commissioner, Eastern District of Virginia.

Order on foregoing petition.

NORFOLK, *October* 17, 1891.

Let the writ issue as prayed for, returnable here at Norfolk on Tuesday, the 20th day of October, at 11 o'clock a. m.

RO. W. HUGHES, *Judge.*

To the clerk of the circuit court of the United States for the eastern district of Virginia.

And on the same day, to wit, on the 17th day of October, A. D. 1891, the writ of habeas corpus issued from the clerk's office of said circuit court. Said writ, together with the marshal's return thereon, is as follows:

Habeas corpus.

CIRCUIT COURT OF THE UNITED STATES,
Eastern District of Virginia, ss:

The President of the United States of America to John F. McGlensey, captain, commanding receiving-ship "Franklin," of the United States Navy, greeting:

5 We command you that the body of James Van Vranken, detained by you and under your custody, as it is said, by whatso-

ever name he may be called, together with the day and cause of his being taken and detained, you have before the judges of our circuit court of the United States for the eastern district of Virginia, sitting at the city of Norfolk, in said district, on Tuesday, the 20th day of October, A. D. 1891, at eleven o'clock a. m. on that day, to do, submit to, and receive all and singular those things which shall then and there be considered of him in this behalf. And have you then and there this writ.

Witness, the honorable M. W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Norfolk, this 17th day of October, A. D. 1891.

[SEAL] M. F. PLEASANTS,
Clerk,
By H. S. ACKISS,
Deputy Clerk.

Marshal's return.

Executed the within by serving a copy of the within on John F. McGlensey, captain commanding receiving ship Franklin, of the United States Navy, this 17th day of October, 1891.

R. R. FARR,
U. S. Marshal,
Per J. J. SULLIVAN,
Deputy.

And at another day, to wit, on the 19th day of October, A. D. 1891, came John F. McGlensey, captain, U. S. Navy, commanding U. S. R. S. "Franklin," and filed in open court his return to the foregoing writ, which return, together with the exhibit therewith, is as follows, to wit:

6 The within-named James Van Vranken was taken into my custody on the 10th day of July, 1891, by virtue of the following order:

COMMANDANT'S OFFICE, NAVY-YARD,
Norfolk, Va., July 10, 1891.

SIR: You will receive on board the "Franklin" Paymaster's Clerk James Van Vranken, U. S. N., for close confinement, under a charge of theft, for safe-keeping. You will place a sentry over him and use every precaution to prevent his escape. You will furnish him with subsistence and quarters.

Respectfully,

A. W. WEAVER,
Commodore, Commandant.

Comm'd'g Officer, U. S. R. S. "Franklin," Navy-Yard, Norfolk, Virginia.

I append as a part of this return a copy of a letter, marked "Copy W. A., Navy Department, Washington, October 15, 1891," numbered $\frac{4080}{91}$, addressed to the honorable the Attorney-General, by F. M. Ramsay, Acting Secretary of the Navy.

And he is detained for no other cause.

JOHN F. MCGLENSEY,
Captain, U. S. Navy, Com'd'g U. S. R. S. Franklin.

NORFOLK, VA., *October* 19, 1891.
Sworn to and subscribed before me this 19th day of October, 1891.
H. S. ACKISS,
U. S. Commissioner.

Filed Oct. 20, 1891. H. S. Ackiss, deputy clerk.

7 The copy of the letter filed as a part of the foregoing return is as follows, to wit:

(Copy, E. A.)

4080
91

NAVY DEPARTMENT,
Washington, October, 1891.

SIR: I enclose herewith a copy of a letter, dated the 13th instant, from Mr. James E. Heath, in which, as counsel for Pay Clerk James Van Vranken, U. S. Navy, who was recently tried before a general court-martial at the navy-yard, Norfolk, Va., and is now on the receivingship Franklin at that yard awaiting the action of the Department upon the findings and sentence of the court in his case, in which Mr. Heath states that on Friday next, the 16th instant, he will apply to Hon. Robert W. Hughes, judge of the United States court at Norfolk, for a writ of habeas corpus for the purpose of testing the legality of the sentence of the court.

In view of the notice given the Department by Mr. Heath, I have the honor to request that the United States attorney may be instructed to appear in behalf of the Government should an application be made for a writ of habeas corpus in the case.

Pay Clerk Van Vranken was tried before a general court-martial convened at the navy-yard, Norfolk, Va., in August last upon the following charges:

1. Wrongfully and knowingly disposing of property of the
8 United States intended for the naval service thereof, in violation of article fourteen of the articles for the government of the Navy of the United States.

2. Knowingly and wilfully misappropriating property of the United States intended for the naval service thereof, in violation of article fourteen of the articles for the government of the Navy of the United States.

3. Countenancing a fraud against the United States, in violation of article fourteen of the articles for the government of the Navy of the United States.

4. Attempting a fraud against the United States, in violation of article fourteen of the articles for the government of the Navy of the United States.

The court found Pay Clerk Van Vranken guilty of the first, second, and third charges, and not guilty of the fourth charge, and sentenced him as follows: "To be confined in such prison or penetentiary as the honorable Secretary of the Navy may designate for the period of one (1) year, to lose all pay which may become due him during that period, excepting the sum of two (2) dollars per month for necessary prison expenses, and a further sum of fifty (50) dollars to be paid him at the

expiration of his confinement, when he shall be dishonorably discharged from the service of the United States. Total loss of pay amounting to one thousand two hundred and twenty-three dollars and sixty cents ($1,223.60)."

The proceedings, findings, and sentence have not yet been acted upon by the Department, this action having been delayed at the urgent request of friends of Mr. Van Vranken.

9 I enclose a copy of the order convening the court, together with the copies of the charges and specifications upon which Pay Clerk Van Vranken was tried, and the findings and sentence of the court in his case.

Very respectfully,

F. M. RAMSEY,
Acting Secretary of the Navy.

To the honorable the ATTORNEY-GENERAL.

And on the same day, to wit, on the 20th day of October, 1891, came the appellee, James Van Vranken, and filed in open court the following as evidence in this case, in the words and figures following, to wit:

Regulations relating to the day department, U. S. Navy, 1878.

Chapter IX, page 125, paragraph 81: No clerk employed by a pay officer on shore can be considered as attached to the Navy or subject to the Articles of War. (Sec. of Navy, June 1, 1869.)

And on the same day, to wit, on the 20th day of October, 1891, came the appellant, John F. McGlensey, and filed in open court the following as evidence in this case, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Navy Department, Washington, D. C., October 17, 1891.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed are correct copies of the appointment acceptance and agreement, and oath of office of James Van Vranken, paymaster's clerk, U. S. Navy, on file and of record in this Department.

In testimony whereof, I have hereunto set my hand and caused the seal of the Navy Department of the United States to be affixed, at the city of Washington, this seventeenth day of October, in the year of our Lord one thousand eight hundred and ninety-one, and of the

10 independence of the United States the one hundred and sixteenth.

[SEAL.] JAMES R. SOLEY,
Acting Secretary of the Navy.

H. B. R.

NAVY DEPARTMENT,
Washington, D. C., October 4, 1890.

SIR: Upon the nomination of Pay Inspector Edward Bellows, U. S N., you are hereby appointed paymaster's clerk in the U. S. Navy for duty as clerk to inspection, provision, clothing, navy-yard, Norfolk, Virginia, from October 16, 1890.

Enclosed is a blank form of acceptance for your signature, also a blank oath of office, which you will duly execute and return with your letter of acceptance to the Department; having done which you will proceed to Norfolk, Va., and report to commandant, navy-yard, for duty.

Very respectfully,

B. F. TRACY,
Secretary of the Navy.

Mr. JAMES VAN VRANKEN,
No. 2212 Lombard Street, Philadelphia, Pa.

11 *Acceptance and agreement.*

PHILA., PA., *7th Oct.* 1890.

SIR: I hereby accept the appointment of paymaster's clerk, dated 16th Oct., 1890, conferred on me, and do hereby oblige and subject myself during my service as paymaster's clerk to comply with and be obedient to such laws, regulations, and discipline of the Navy as are now in force, or that may be enacted by Congress or established by other competent authority, and herewith enclose oath of office duly executed.

JAMES VAN VRANKEN,
Paymaster's Clerk.

To the SECRETARY OF THE NAVY,
Washington, D. C.

Office of general storekeeper, navy-yard, Norfolk, Va. Forwarded Oct. 9, 1890. Edward Bellows, pay inspector, U. S. N., general storekeeper. Navy-yard, Norfolk, commandant's office, Oct. 9, 1890. Forwarded. A. W. Weaver, commodore, commandant.

12 (Oath to be taken before any one duly authorized to administer same.)

Having been appointed paymaster's clerk in the Navy of the United States, I, James Van Vranken, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God.

JAMES VAN VRANKEN,
Paymaster's Clerk.

PENNSYLVANIA,
Philadelphia, ss:

Sworn to and subscribed before me this eighth day of October, 1890.

[SEAL.] WM. J. P. ALLEN,
Notary Public.

The annexed blanks are to be filled by the person subscribing to the above oath.

State or Territory in which born, New York. State or Territory from which appointed, Penn. State or Territory of which a citizen, Penn. Date of birth, Jan'y 26, 1856.

13 UNITED STATES OF AMERICA,
Navy Department, Washington, D. C., October 15, 1891.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed are correct copies of the following described papers, viz, charges and specifications, dated August 5, 1891, against Paymaster's Clerk James Van Vranken, U. S. N., and the findings and sentence of the court in said case on file in this Department.

In testimony whereof, I have hereunto set my hand and caused the seal of the Navy Department of the United States to be affixed, at the city of Washington, this fifteenth day of October, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and sixteenth.

[SEAL.] J. M. RAMSAY,
Acting Secretary of the Navy.

3065

91

NAVY DEPARTMENT,
Washington, D. C., August 5, 1891.

To Captain ROBERT F. BRADFORD, U. S. Navy,
23 *Court street, Portsmouth, N. H.:*

A general court-martial is hereby ordered to convene at the navy-yard, Norfolk, Va., at noon, on Monday, August 10, 1891, or as soon
14 thereafter as practicable, for the trial of James Van Vranken, paymaster's clerk, U. S. Navy, and of such other persons as may be legally brought before it.

The court is to be composed of the following members, any five of whom are empowered to act, viz: Captain Robert F. Bradford, U. S. Navy; Commander Philip H. Cooper, U. S. Navy; Commander Edwin White, U. S. Navy; Paymaster Jonathan Q. Barton, U. S. Navy; Lieutenant-Commander Robert E. Carmody, U. S. Navy; Paymaster Stephen Rand, jr., U. S. Navy; Lieutenant Charles C. Cornwell, U. S. Navy; Passed Assistant Paymaster John R. Martin, U. S. Navy; Ensign Thomas Snowden, U. S. Navy; and of First Lieutenant George R. Benson, U. S. Marine Corps, as judge-advocate. No other officers can be detailed without manifest injury to the service.

This employment on shore duty is required by the public interests, and such service will continue until August 31, 189(?), unless it is otherwise ordered.

JAMES R. SOLEY,
Acting Secretary of the Navy.

15 *Charges and specifications of charges preferred by the Secretary of the Navy against James Van Vranken, a paymaster's clerk in the United States Navy.*

CHARGE I.

Wrongfully and knowingly disposing of property of the United States intended for the naval service thereof, in violation of article fourteen of the articles for the government of the Navy of the United States.

SPECIFICATION 1.

In this, that the said James Van Vranken, paymaster's clerk, United States Navy, on duty as chief clerk in the office of the general storekeeper at the navy-yard, Norfolk, Virginia, did, on or about the thirteenth day of June, eighteen hundred and ninety-one, procure the removal from said navy-yard of a quantity of composition metal, the property of the United States, intended for the use of the naval service thereof, packed in six boxes, and weighing about nine hundred and fifty pounds, of the value of forty-seven dollars and fifty cents, or thereabouts, by preparing a fraudulent pass therefor, which said pass, being in his, the said Van Vranken's own handwriting, represented that said boxes were intended for shipment to monitors, at Richmond, Virginia, and he, the said Van Vranken, well knowing that the contents of said boxes were not intended for, had not been ordered, and were not to be delivered to said vessels, did wrongfully and knowingly dispose of the said property, by causing the same to be conveyed by one Americus Smith to the place of business of J. W.
16 Woodman, a junk dealer in Portsmouth, Virginia.

SPECIFICATION 2.

In this, that the said James Van Vranken, paymaster's clerk, United States Navy, on duty as chief clerk in the office of the general storekeeper at the navy-yard, Norfolk Virginia, did, on or about the eighth day of July, eighteen hundred and ninety-one, procure the removal from said navy-yard of a quantity of composition metal, the property of the United States, intended for the use of the naval service thereof, packed in six boxes, and weighing about nine hundred and fifty pounds, of the value of forty-seven dollars and fifty cents, or thereabouts, by means of a fraudulent pass therefor, which said pass represented that said boxes were intended for shipment; and he, the said Van Vranken, well knowing that the contents of said boxes were not intended for, had not been ordered, and were not to be delivered to any naval station or to any vessel of the Navy, did wrongfully and knowingly dispose of the said property by causing the same to be conveyed by one Americus Smith to the place of business of J. W. Woodman, a junk dealer in Portsmouth, Virginia.

SPECIFICATION 3.

In this, that the said James Van Vranken, paymaster's clerk, United States Navy, on duty as chief clerk in the office of the general storekeeper at the navy-yard, Norfolk, Virginia, did, on or about the dates hereinafter stated, in the year eighteen hundred and ninety-one, procure the removal from said navy-yard of a number of small boxes, each containing composition metal, the property of the United States, and intended
17 for the use of the naval service thereof, as follows: March eighteenth, six boxes; April eleventh, five boxes; April twenty-ninth, five boxes; June twelfth, six boxes; July sixth, six boxes; in all, twenty-eight boxes, weighing, in the aggregate, five thousand eight hundred and ten pounds, and of the value of two hundred and ninety dollars and fifty cents, or thereabouts, by preparing fraudulent passes therefor, which said passes being in his, Van Vranken's, own handwriting, represented that said boxes

were intended for shipment to monitors, Richmond, Virginia; and he, the said Van Vranken, well knowing that the contents of said boxes were not intended for, had not been ordered, and were not to be delivered to said vessels, did, on or about the dates aforesaid, wrongfully and knowingly dispose of said property by causing the same to be conveyed away from said navy-yard by one Americus Smith and delivered to some person or persons unknown.

SPECIFICATION 4.

In this, that the said James Van Vranken, paymaster's clerk, United States Navy, on duty as chief clerk in the office of the general storekeeper at the navy-yard, Norfolk, Virginia, did, on or about the dates hereinafter stated, in the year eighteen hundred and ninety-one, procure the removal from the said navy-yard of a number of small boxes, each containing a quantity of composition metal, the property of the United States, and intended for the use of the naval service thereof, as follows: April twenty-
fifth, five boxes; May ninth, five boxes; May fifteenth, six boxes;
18 May nineteenth, five boxes; May twenty-ninth, six boxes; June
fifth, six boxes; in all, thirty-three boxes, weighing, in the aggregate, six thousand eight hundred and forty-seven and one-half pounds, and of the value of three hundred and forty-two dollars and thirty-seven and one-half cents, or thereabouts, by preparing fraudulent passes therefor, which said passes being in his, Van Vranken's, own handwriting, represented that said boxes were intended for shipment; and he, the said Van Vranken, well knowing that the contents of said boxes were not intended for, had not been ordered, and were not to be delivered to any naval station or to any vessel of the Navy, did, on or about the dates aforesaid, wrongfully and knowingly dispose of said property by causing the same to be conveyed away from said navy-yard by one Americus Smith and delivered to some person or persons unknown.

CHARGE II.

Knowingly and wilfully misappropriating property of the United States, intended for the naval service thereof, in violation of article fourteen of the Articles for the Government of the Navy of the United States.

SPECIFICATION 1.

In this, that the said James Van Vranken, paymaster's clerk, United States Navy, on duty as chief clerk in the office of the general storekeeper at the navy-yard, Norfolk, Virginia, did, on or about the thirteenth day of June, eighteen hundred and ninety-one, procure the removal
from said navy-yard of a quantity of composition metal, the prop-
19 erty of the United States, intended for the use of the naval service
thereof, packed in six boxes, and weighing about nine hundred and fifty pounds, of the value of forty-seven dollars and fifty cents, or thereabouts, by preparing a fraudulent pass therefor, which said pass being in his, the said Van Vranken's, own handwriting, represented that said boxes were intended for shipment to monitors at Richmond, Virginia; and he, the said Van Vranken, well knowing that the contents of said boxes were

bot intended for, had not been ordered, and were not to be delivered to said vessels, did knowingly and wilfully misappropriate said property by causing the same to be conveyed by one Americus Smith to the place of business of J. W. Woodman, a junk dealer in Portsmouth, Virginia.

SPECIFICATION 2.

In this, that the said James Van Vranken, paymaster's clerk, United States Navy, on duty as chief clerk in the office of the general storekeeper at the navy-yard, Norfolk, Virginia, did, on or about the eighth day of July, eighteen hundred and ninety-one, procure the removal from said navy-yard of a quantity of composition metal, the property of the United States, intended for the use of the naval service thereof, packed in six boxes, and weighing about nine hundred and fifty pounds, of the value of forty-seven dollars and fifty cents, or thereabouts, by means of a fraudulent pass therefor, which said pass represented that said boxes were intended for shipment; and he, the said Van Vranken, well knowing that the contents of said boxes were not intended for, had not been ordered, and were not to be delivered to any naval station or to any vessel
20 of the Navy, did knowingly and wilfully misappropriate the said property by causing the same to be conveyed by one Americus Smith to the place of business of J. W. Woodman, a junk dealer in Portsmouth, Virginia.

SPECIFICATION 3.

In this, that the said James Van Vranken, paymaster's clerk, United States Navy, on duty as chief clerk in the office of the general storekeeper at the navy-yard, Norfolk, Virginia, did, on or about the dates hereinafter stated, in the year eighteen hundred and ninety-one, procure the removal from said navy-yard of a number of small boxes, each containing composition metal, the property of the United States, and intended for the use of the naval service thereof, as follows: March eighteenth, six boxes; April eleventh, five boxes; April twenty-ninth, five boxes; June twelfth, six boxes; July sixth, six boxes; in all, twenty-eight boxes, weighing, in the aggregate, five thousand eight hundred and ten pounds, and of the value of two hundred and ninety dollars and fifty cents, or thereabout, by preparing fraudulent passes therefor, which said passes, being in his, Van Vranken's, own handwriting, represented that said boxes were intended for shipment to monitors, Richmond, Virginia; and he, the said Van Vranken, well knowing that the contents of said boxes were not inyended for, had not been ordered, and were not to be delivered to said vessel, did, on or about the dates aforesaid, knowingly and wilfully misappropriate said property by causing the same to be conveyed away from said navy-yard by one Americus Smith and delivered to some person or persons unknown.

21 SPECIFICATION 4.

In this, that the said James Van Vranken, paymaster's clerk, United States Navy, on duty as chief clerk the office of the general storekeeper at the navy-yard, Norfolk, Virginia, did, on or about the dates hereinafter

stated, in the year eighteen hundred and ninety-one, procure the removal from the said navy-yard of a number of small boxes, each containing a quantity of composition metal, the property of the United States and intended for the use of the naval service thereof, as follows: April twenty-fifth, five boxes; May ninth, five boxes; May fifteenth, six boxes; May nineteenth, five boxes; May twenty-ninth, six boxes; June fifth, six boxes; in all, thirty-three boxes, weighing in the aggregate six thousand eight hundred and forty-seven and one-half pounds, and of the value of three hundred and forty-two dollars and thirty-seven and one-half cents, or thereabouts, by preparing fraudulent passes therefor, which said passes being in his, Van Vranken's, own handwriting, represented that said boxes were intended for shipment, and he, the said Van Vranken, well knowing that the contents of said boxes were not intended for, had not been ordered, and were not to be delivered to any naval station or to any vessel of the Navy, did, on or about the dates aforesaid, knowingly and willfully misappropriate said property by causing the same to be conveyed away from said navy-yard, by one Americus Smith, and delivered to some person or persons unknown.

22 CHARGE III.

Countenancing a fraud against the United States in violation of Article Fourteen of the Articles for the Government of the Navy of the United States.

SPECIFICATION 1.

In this, that the said James Van Vranken, paymaster's clerk, United States Navy, on duty as chief clerk in the office of the general storekeeper at the navy-yard, Norfolk, Virginia, did, on or about the thirtieth day of June, eighteen hundred and ninety-one, knowingly permit the removal from said navy-yard of a quantity of composition metal, the property of the United States, intended for the use of the naval service thereof, packed in six boxes, and weighing about nine hundred and fifty pounds, of the value of forty-seven dollars and fifty cents or thereabouts, by means of a fraudulent pass therefor, which said pass being in his, the said Van Vranken's, own handwriting, represented that said boxes were intended for shipment to monitors at Richmond, Virginia, and he, the said Van Vranken, well knowing that the contents of said boxes were not intended for, had not been ordered, and were not to be delivered to said vessels, did countenance a fraud against the United States by permitting the said property to be conveyed by one Americus Smith to the place of business of J. W. Woodman, a junk dealer in Portsmouth, Virginia.

23 SPECIFICATION 2.

In this, that the said James Van Vranken, paymaster's clerk, United States Navy, on duty as chief clerk in the office of the general storekeeper at the navy-yard, Norfolk, Virginia, did, on or about the eighth day of July, eighteen hundred and ninety-one, knowingly permit the removal from said navy-yard of a quantity of composition metal, the property of the United States, intended for the use of the naval service thereof, packed

in six boxes, and weighing about nine hundred and fifty pounds, of the value of forty-seven dollars and fifty cents, or thereabouts, by means of a fraudulent pass therefor, which said pass represented that said boxes were intended for shipment, and he, the said Van Vranken, well knowing that the contents of said boxes were not intended for, had not been ordered, and were not to be delivered to any naval station or to any vessel of the Navy, did countenance a fraud against the United States by permitting the said property to be conveyed by one Americus Smith to the place of business of J. W. Woodman, a junk dealer in Portsmouth, Virginia.

SPECIFICATION 3.

In this, that the said James Van Vranken, paymaster's clerk, United States Navy, on duty as chief clerk in the office of the general storekeeper at the navy-yard, Norfolk, Virginia, did, on or about the dates hereinafter stated, in the year eighteen hundred and ninety-one, knowingly permit the removal from said navy-yard of a number of small boxes, each
24 containing composition metal, the property of the United States, and intended for the use of the naval service thereof, as follows: March eighteenth, six boxes; April eleventh, five boxes; April twenty-ninth, five boxes; June twelfth, six boxes; July sixth, six boxes; in all, twenty-eight boxes, weighing in the aggregate five thousand eight hundred and ten pounds and of the value of two hundred and ninety dollars and fifty cents, or thereabouts, by means of fraudulent passes therefor, which said passes being in his, Van Vranken's, own handwriting, represented that said boxes were intended for shipment to monitors, Richmond, Virginia, and he, the said Van Vranken, well knowing that the contents of said boxes were not intended for, had not been ordered, and were not to be delivered to said vessels, did countenance a fraud against the United States by permitting the said property to be conveyed from said navy-yard by one Americus Smith, and delivered to some person or persons unknown.

SPECIFICATION 4.

In this, that the said James Van Vranken, paymaster's clerk, United States Navy, on duty as chief clerk in the office of the general storekeeper, at the navy-yard, Norfolk, Virginia, did, on or about the dates hereinafter stated, in the year eighteen hundred and ninety-one, knowingly permit the removal from the said navy-yard of a number of small boxes, each containing a quantity of compensation metal, the property of the United States and intended for the use of the naval service thereof, as follows: April twenty-fifth, five boxes; May ninth, five boxes; May fifteenth, six boxes; May nineteenth, five boxes; May twenty-
25 ninth, six boxes; June fifth, six boxes; in all, thirty-three boxes, weighing in the aggregate six thousand eight hundred and forty-seven and one-half pounds, and of the value of three hundred and forty-two dollars and thirty-seven and one-half cents, or thereabouts, by means of fraudulent passes therefor, which said passes, being in his, Van Vranken's, own handwriting, represented that said boxes were intended for shipment, and he, the said Van Vranken, well knowing that the contents of said boxes were not intended for, had not been ordered, and were not

to be delivered to any naval station or to any vessle of the Navy, did countenance a fraud against the United States by permitting the said property to be conveyed from said navy-yard, by one Americus Smith, and delivered to some person or persons unknown.

CHARGE IV.

Attempting a fraud against the United States in violation of article fourteen of the articles for the government of the Navy of the United States.

SPECIFICATION.

In this, that the said James Van Vranken, paymasters' clerk, United States Navy, on duty as chief clerk in the office of the general storekeeper at the navy-yard Norfolk, Virginia, did, without proper authority, on or about the ninth day of July, eighteen hundred and ninety-one, cause to be packed for the purpose of removal from said navy-yard,
eight boxes, containing forty-one pigs of composition metal,
26 weighing about thirteen hundred and one pounds, the property of
the United States, of the value of sixty-five dollars and five cents, or thereabouts, and did thereby attempt a fraud against the United States.

JAMES R. SOLEY,
Acting Secretary of the Navy.

NAVY DEPARTMENT, *August* 5, 1891.

Findings and sentence of the court in the case of Jaems Van Vranken, pay clerk U. S. Navy.

The court was then cleared for deliberation, and after full and mature consideration of all the evidence, find in the case of the accused, James Van Vranken, paymaster's clerk, U. S. Navy, as follows:

The first specification of the first charge, "proven."
The second specification of the first charge, "proven."
The third specification of the first charge, "proven."
The fourth specification of the first charge, "proven."
And the court does therefore find the said James Van Vranken, paymaster's clerk, U. S. Navy, of the first charge, "guilty."
27 The first specification of the second charge, "proven."
The second specification of the second charge, "proven."
The third specification of the second charge, "proven."
The fourth specification of the second charge, "proven."
And the court does therefore find the said James Van Vranken, paymaster's clerk, U. S. Navy, of the second charge, "guilty."
The first specification of the third charge, "proven."
The second specification of the third charge, "proven."
The third specification of the third charge, "proven."
The fourth specification of the third charge, "proven."
And the court does therefore find the said James Van Vranken, paymaster's clerk, U. S. Navy, of the third charge, "guilty."
The specification of the fourth charge, "not proven."

And the court does therefore find the said James Van Vranken, paymaster's clerk, U. S. Navy, of the fourth charge, "not guilty."

28 And the court does therefore sentence the said James Van Vranken, paymaster's clerk, U. S. Navy, to be confined in such prison or penetentiary as the honorable Secretary of the Navy may designate for the period of one (1) year; to lose all pay which may become due him during that period, excepting the sum of two (2) dollars per month for necessary prison expenses, and a further sum of fifty (50) dollars to be paid him at the expiration of his confinement, when he shall be dishonorably discharged from the service of the United States; total loss of pay amounting to one thousand two hundred and twenty-three dollars and sixty cents ($1,223.60).

Filed Oct. 20, 1891. H. S. Ackiss, deputy clerk.

29 The opinion of the court is as follows, viz:

U. S. circuit court, Norfolk, Oct. 20, 1891.—Ex-parte: James Van Vranken.—On a petition for the writs of habeas corpus.

HUGHES, J.:

It appears from the evidence before the court, that James Van Vranken, late clerk to Edward Bellows, a paymaster in the Navy of the United States, who had been on duty in the navy-yard at Gosport, was arraigned and tried before a court-martial of the Navy on charges, under section 1624 of the Revised Statutes of the U. S., article 14, clause 8, of having illegally misappropriated, disposed of, and applied to his own use certain property of the U. S. in the Gosport navy-yard; that the trial was concluded on the 17th August last; that the court-martial on that day passed sentence on the accused, and transmitted the sentence and the record of proceedings to the Secretary of the Navy for his approval; that the sentence of the court-martial was, that the accused should be confined and imprisoned for one year in such penetentiary as the Secretary of the Navy might designate and to lose all pay that may become due him except two dollars a month for necessary prison expenses, and fifty dollars to be paid him at the expiration of his confinement, and then to be dishonorably discharged from the service of the U. S.; which loss of pay the accused alleges in his petition to be in the aggregate $1,223.60.

30 That the accused is now and has been since such sentence, now more than two months, confined in the ship Franklin, in the navy-yard aforesaid, under the custody of its commanding officer, awaiting removal to such penetentiary as the Secretary of the Navy may designate, who has not yet passed upon the sentence of the court-martial.

On the prayer of the accused for an award of the writ of habeas corpus, the process has been issued and served on the commandant of the ship Franklin, who has made due return, showing the grounds of detention to be as indicated in the foregoing recital.

If it were conceded that a civilian, acting as clerk of a paymaster of the Navy on shore in time of peace, were a military person amenable to trial by court-martial for an offence not capital, the question in this case would be whether it were competent for a court-martial to pass sentence of confinement in a public penetentary for the offence with which Van

Vranken is charged. No authority is given by any statute of the U. S. to a court-martial of the Navy to pass sentence of confinement in a penitentiary, except for crimes punishable with death. As the crime charged against the accused is not capital, is in fact hardly above the grade of petty larceny at common law, and the court-martial did pass sentence as if the offence had been capital, that is to say, did sentence to confinement in a penetentiary, the action was plainly without authority of law, and null and void.

31 It is erroneously claimed that this is contrary to the ruling of the Supreme Court in Dynes v. Hoover (20 How. 81, 84.) In that case an enlisted soldier had been tried by court-martial for desertion, found guilty by "partial verdict" of an attempt to desert, and sentenced to confinement in a penitentiary for six months. The trial was in 1857, under the act for the better government of the Navy, of April 23, 1800 (C. 33, Col. 2, Statutes at Large, p. 45, et seq.). Article XVI of the act made desertion to and enemy punishable by death; and Article XXXII made all offenses not specified in the act, including of course and attempt to desert, punishable "according to the laws and customs in such cases at sea."

The Supreme Court held that the offence of attempting to desert was in the same category as offenses punishable with death, resting its decision on the XXXII article of Navy Regulations, and saying "when offenses and crimes are not given in terms or by definition, the want of it may be supplied by a comprehensive enactment, such as the 32nd article of the Rules of the Navy, which means that courts-martial have jurisdiction of such offenses as are not specified, but which have been recognized to be crimes and offenses by the usages in the navies of all nations, and that they shall be punished according to the laws of the sea," p. 82, according to which attempts to desert were punishable capitally.

But that general provision of criminal law for the Navy has been long ago removed from the statute book, and in its place has been sub-

32 stituted the 22nd article for the government of the Navy, U. S. Revised Statutes, p. 281, taken from the act of July, 1862, Vol. 12, Statutes at Large, p. 603, article 8, which declares that all offenses not specified by law "shall be punished as a court-martial may direct." Therefore, I repeat that no authority is given by any statute of the U. S. to a court-martial to sentence to confinement in a public penitentiary, except for crimes punishable with death.

But the objection to the proceedings under which Van Vranken is confined is weightier than the one thus presented. It is a fundamental principle in this country, it is an article of the National Constitution, that no person shall be deprived of life, liberty, or property without due process of law; as part of which process it is declared that no person shall be held to answer for an infamous crime except upon indictment of a grand jury. And the Supreme Court of the United States has decided, in Ex parte Wilson, 114 U. S., 417; Mackin v. U. S., 117 U. S., 348; and U. S. v. DeWalt, 128 U. S., 393, that offenses involving punishment in public penetentiaries or general State prisons are to be regarded as within the class of infamous offenses.

Another and more important ingredient of "due process of law" is that every person accused of crime is entitled to a trial of the issue of guilty or not guilty by a jury of his peers, or of his country; that is to say, by what is known to the law as petit jury.

In all cases, therefore, in which an accused person is sentenced to imprisonment in a public penetentiary without the intervention of
33 a grand jury, and upon any other verdict than that of a jury of twelve of his peers, the proceeding is in violation of constitutional law, null and void, and may be so pronounced by a court of competent jurisdiction.

This right of trial upon indictment and by a jury of one's countrymen is regarded as the chief bulwark of civil liberty, without which all rights of citizenship would be in continual peril. And the more humble the citizen, the more imperative the law in demanding these guarantees against oppression.

It is true that there are exceptions to rules of procedure even as sacred as those just described as essential to the freedom and safety of the citizen. Persons who belong to the Army and the Navy, in which summary trial under martial law is necessary to discipline and to the efficiency of those organizations, are not entitled to the legal privileges which have been mentioned as belonging to every citizen. The officer, or soldier, or sailor of the Army or Navy voluntarily surrenders the rights of the citizen in this respect when he enters or enlists in those services; and he therefore can not complain of the method of trial or the sentence of military courts so long as they conform to military usage and to the laws of the land relating to the Army and Navy.

The question, therefore, in the case of Vran Vranken is, does he belong to the Navy? Is he a member of the naval establishment of the United States? Does he belong to the military or civil establishment of the country? Obviously, it is not every one who has employment in imme-
34 diate connection with the Navy that belongs to the military establishment of the Navy. The workmen and artisans employed in building and repairing naval vessels are mere civilians, and are in no sense a part of the military organization of the Navy. The same is the case with clerks who keep books and accounts and perform clerical service for officers of the Navy while on land. I believe it has been held by some of the courts, and held very properly, that clerks of naval officers on duty on shipboard on a voyage belong to the military establishment and are amenable to martial law. But this is because of the necessity of absolute discipline on a ship at sea, where there can not in the nature of the case be one law for one class of those on board and another law for another class.

The courts have recognized the distinction between the case of persons performing clerical duty on shipboard and that of persons performing such duties on land in time of peace. That clerks of naval officres doing duty on land in time of peace, appointed from civil life for periods terminable at the will of such officers, and liable to return to civil life whenever such employment ceases, are civilians, and not members of the military establishment of the Navy, seems to me to be too clear to admit of doubt.

In respect toclerks of paymasters, such as Van Vranken is, the Regulations of the Navy, published in 1878, say expressly in article 81, on page 125, that "no clerk employed by a pay officer on shore can be considered as attached to the Navy or subject to the articles of war."
35 And no revocation of this article has ever been announced.

There can be no sufficient reason assigned for subjecting this class of persons to military trial for civil offenses. Even in the case of

an assistant paymaster who had been tried for civil offenses and condemned by court-martial, Secretary Robeson said, in 1871, in General Order No. 162, in disapproving of the sentence: "In cases of serious question, for offenses not against discipline or mere military law, and where there is concurrent jurisdiction, I am unwilling to exercise the discretion imposed upon me for the execution for such a sentence, the legality of which is doubtful when enforced by military authority for offenses which may be pursued and properly punished by the criminal courts of the country."

In this case the Secretary, although authorized by law to deal with the case of a person clearly amenable to court-martial, declined to approve a military sentence as against public policy and the spitit of our laws on this subject. For a much stronger reason should the military trial be avoided in the case of a person declared to be a civilian.

In a case submitted to the Attorney-General of the U. S., in 1878, for his opinion, 16 Opinions, p. 13, that officer held that a quartermaster's clerk (i. e., a civilian employed in that capacity) is not amenable to court-martial jurisdiction, because such a person does not belong to the military establishment.

In another case, 16 Opinions, 48, the same officer gave a like opinion in the case of another civilian clerk of a quartermaster of the Army. The clerk of a pay officer of the Navy on duty on land in time of peace
36 is not a member of the military organization of that branch of the service, and therefore is not amenable to trial and punishment by court-martial. And being a civilian, he is entitled to the protection of those provisions of criminal law which forbid trials without indictment and by any other tribunal than a jury of the country.

The only embarrassment I feel in this case arises from the fact that the finding of the court-martial is still pending before the Secretary of the Navy, awaiting his approval or disapproval. I am bound to believe that the Secretary would disapprove that finding and would release the petitioner, and if this court were at liberty to postpone its action until after that event, it would much prefer to do so; but its plain duty is to release, and an order will be made to that effect.

37 *Order of discharge.*

In the circuit court of the United States for the eastern district of Virginia, at Norfolk.—Ex parte: James Van Vranken.

This day John F. McGlensey made return to the writ of habeas corpus issued by this court on the 17th day of October, A. D. 1891, and thereupon after argument of counsel representing the prisoner and the Department of the Navy, and after due deliberation had by the court, the court is of the opinion, for reasons stated in writing and filed with the record of this case, that the prisoner, James Van Vranken, is illegally detained by the said John F. McGlensey, commander as aforesaid, and doth order that the said John F. McGlensey doth release and discharge the said James Van Vranken from his custody and control, and that a copy of this order be forthwith served upon and delivered to the said John F.

McGlensey, commander as aforesaid, by the marshal of this district, and that the said marshal make return thereof.

And on the motion of T. R. Boreland, counsel for the Government, a writ of error is allowed to the judgment aforesaid.

RO. W. HUGHES, *Judge.*

NORFOLK, *October 20th*, 1891.

38 *Marshal's return.*

Executed the within by serving a copy of the within on Capt. John F. McGlensey, and prisoner, James Van Vranken, produced before the court this 20th day of October, 1891.

R. R. FARR, *U. S. Marshal.*
Per J. J. SULLIVAN, *Deputy.*

And thereupon on the same day, to wit, on the 20th day of October, A. D. 1891, personally came the petitioner, James Van Vranken, as principal, and John S. Hammond, as surety, and entered into the following obligation:

Ex parte: James Van Vranken.

Be it remembered that on this day in open court personally cames James Van Vranken, and acknowledged himself to be indebted to the United States of America in the sum of one thousand dollars, with John S. Hammond, as surety.

The condition of the above obligation is, that if James Van Vranken shall be before this court on the first day of its May term, 1892, then this obligation to be void, otherwise to remain in full force and virtue.

39 And on another day, to wit, on the 17th day of November, 1891, came the appellant, John F. McGlensey, by his counsel, in open court and applied for the following order, which was entered as follows, to wit:

In the circuit court of the United States for the eastern district of Virginia.—Ex parte: James Van Vranken.

So much of the order entered herein on the 20th day of October, 1891, as allows a writ of error to the judgment then entered is hereby revoked and rescinded.

RO. W. HUGHES, *Judge.*

NORFOLK, *Nov.* 17, 1891.

And on the same day, to wit, on the 17th day of November, 1891, came the appellant, John F. McGlensey, and filed in open court his petition praying for an appeal to the Supreme Court of the United States from the order herein entered on the 20th day of October, 1891, which petition is in the words and figures following, to wit:

To the honorable Hugh L. Bond and Robert W. Hughes, judges of the United States circuit court for the eastern district of Virginia.

The petition of John F. McGlensey, captain commanding U. S. R. S. "Franklin," respectfully represents that he is aggrieved by the final order of the said circuit court of the United States for the eastern district of

Virginia, entered at Norfolk on the 20th day of October, 1891, upon the application of James Van Vranken to the said circuit court for a writ of habeas corpus; the said final order being the discharge of the said James Van Vranken from the custody of the said John F. McGlensey, herewith is presented an authenticated copy of the record from which the following facts will appear:

40 *Statement.*

James Van Vranken, a paymaster's clerk in the United States Navy, on duty in the Norfolk navy-yard, was on the 10th day of August, 1891, arrested by the order of Commordore A. W. Weaver, in the Norfolk navy-yard, and was placed in the custody of the appellant, on a charge of theft.

Subsequent to the 10th day of August aforesaid, the said James Van Vranken was tried by a court-martial of the Navy in the said navy-yard on charges under section 1624, R. S. U. S., article 14, eighth clause, of having illegally disposed of and applied to his own use certain property of the United States in the Norfolk navy-yard. He was found guilty of the said charges (record pp. 26–7–8), and sentenced to be confined in such prison or penitentiary as the honorable Secretary of the Navy may designate for the period of one year; to lose all pay which may become due him during that period except the sum of two (2) dollars per month for necessary prison expenses, and a further sum of fifty dollars, to be paid to him at the expiration of his confinement, when he shall be dishonorably discharged from the service of the United States, total loss of pay
41 amounting to one thousand two hundred and twenty-three dollars and sixty cents.

From the 10th day of July, 1891, till the 20th day of October, 1891, the petitioner was on the U. S. R. S. "Franklin," in the custody of the appellant as aforesaid. On the 17th day of October, 1891, the said James Van Vranken filed a petition for a writ of habeas corpus in the circuit court of the United States for this district. The petition, pages 1, 2, 3 of the record, alleged the said trial by court-martial and the finding or sentence aforesaid, and claimed that the said trial by court-martial and the said finding or sentence were illegal, and that the prisoner was restrained of his liberty by the appellant in violation of the Constitution and laws of the United States.

On the 17th day of October, 1891, the court issued the writ as prayed for, returnable October 20, 1891. On that day the appellant made his return, showing the ground of his detention of the petitioner to be as above stated. The court then proceeded to hear the case, and on the same day entered an order discharging the petitioner from the custody of the appellant for reasons given in a written opinion. (See record, pages 29, 30, 31, 32, 33, 34, 35, 36, 37. An appeal was allowed to the appellant in open court.

Assignment of Errors.

1. The court erred in deciding that it was not competent for the court-martial to impose a sentence of confinement in a public penitentiary for the offence for which the petitioner was tried. The decision on that point

was premature, as the return of the appellant (see record, pp. 6, 7,
42 8, 9) shows that no sentence had been imposed and that the petitioner was in custody awaiting sentence. There had been a finding or verdict, as it were, upon which judgment or sentence had been suspended. The Secretary of the Navy had not acted on the finding, the sentence had not been pronounced, and non constat that the Secretary of the Navy would have approved of that part of the finding, which the court held to be unauthorized.

2. But suppose that the sentence had been pronounced and the petitioner had been actually incarcerated in a public penitentiary, it was an error in the court to decide that no authority is given by any statute of the United States to a court-martial of the Navy to pass sentence of confinement in a penitentiary, except for crimes punishable with death. Article 14, sec. 1624, R. S. U. S., provides that "fine and imprisonment, or such other punishment as a court-martial may adjudge, shall be inflicted upon any person in the naval service in the United States who shall embezzle, &c., property of the United States furnished or intended for the military or naval service thereof."

The said court-martial, proceeding under the said act of Congress, inflicted "fine and imprisonment." Article 7 of same section confers upon courts-martial the power to commute the death sentence. It does not either expressly or by implication revoke or limit the powers of the court-martial under article 14 aforesaid. In Dynes v. Hoover, 20 Howard, 83, a sentence similar to that inflicted on Van Vranken was declared "not forbidden by law," and in Ex parte Read, 100 U. S. R. S., C. 19 & 20, a like sentence was upheld.

3. The court erred in deciding that Van Vrankin, a paymaster's clerk in the U. S. N., was not in the naval service.

43 This is the important question in the case, as the learned judge admits in his opinion. The petitioner in this case has, as far as it was in his power to do so, made himself a part of the naval establishment of the country in his acceptance of his office. (Record, p. 11.)

Paymaster's clerks are in the naval service and are amenable to trial by court-martial. (Ex parte Read, supra.) They are so recognized by act of Congress. Sec. 1556, R. S. U. S., provides for their salary as it provides for the salary of the admiral and other persons in the naval service. See also sections 1386 and 1388, R. S. U. S., providing for their appointment.) The very regulation quoted by the learned judge in his opinion (see record, p. 34), which undertakes to draw the line between shore and sea duty, is an assertion that paymaster's clerks are in the naval service and are subject to the regulations, &c., of the Navy.

The regulation might have provided that a paymaster's clerk on shore should be considered as attached to the Navy and subject to the Articles of War. But if the petitioner is in the naval service, no regulation of the Navy can exempt him from the operation of the act of Congress.

The question of law being raised, the courts may hold the regulation to be a nullity, as the circuit court has held this trial by court-martial to be a nullity.

T. R. BORLAND,
U. S. Attorney for Appellant.

44 And on the same day, to wit, on the 17th day of November, 1891, came the appellant, John F. McGlensey, by his counsel, and also James Van Vranken, by his counsel, in open court; and the said John F. McGlensey, by his counsel, applied for the following order, which was entered as follows, to wit:

In the circuit court of the United States for the eastern district of Virginia.—Ex parte James Van Vranken.

Upon the petition of John F. McGlensey, captain, commanding the United States receiving ship Franklin, an appeal to the Supreme Court of the United States from the order entered by the United States circuit court for the eastern district of Virginia, on the 20th day of October, 1891, at Norfolk, is allowed and granted to the said John F. McGlensey.

And the clerk of the circuit court of the United States for the said district is directed to summon the said James Van Vranken to answer the said appeal on the 15th day of December, 1891.

Norfolk, Nov. 17, 1891.

RO. W. HUGHES, *Judge.*

45 UNITED STATES OF AMERICA, TO WIT:

The President of the United States to the judges of the circuit court of United States for the eastern district of Virginia, greeting:

Because, in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said court before you, between James Van Vranken and John F. McGlensey, a manifest error hath happened to the great damage of the said John F. McGlensey, as by complaint appears. He being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, in the District of Columbia, together with this appeal, so that you may have the same at Washington, D. C., on the 15th day of December next in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error which of right and according to the laws and customs of the United States should be done.

Witness the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 17th day of November, in the year of our Lord one thousand eight hundred and ninety-one.

[SEAL.] M. F. PLEASANTS,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

I hereby certify that a copy of this appeal is now on file in my office in the above case.

[SEAL.] M. F. PLEASANTS,
Clerk.
By H. S ACKISS,
Deputy Clerk.

(Indorsed:) No. . United States circuit court, district of Virginia. John F. McGlensey vs. James Van Vranken. Appeal.

46 UNITED STATES OF AMERICA, TO WIT:

To James Van Vranken, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States of America, to be holden at the court-room in the city of Washington, D. C., on the 15th day of December, 1891, to answer an appeal granted by the circuit court of the United States for the eastern district of Virginia, wherein John F. McGlensey is appellant and James Van Vranken is appellee, to show cause, if any there be, why the judgment in favor of the said James Van Vranken should not be corrected and reversed and speedy justice should not be done to the parties in that behalf.

Witness the honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 17th day of November, A. D. 1891.

[SEAL.] M. F. PLEASANTS,
Clerk of the Circuit Court of the United States
for the Eastern District of Virginia.

I hereby certify that a copy of this citation is now on file in my office in the above case.

[SEAL.] M. F. PLEASANTS,
Clerk.
By H. S. ACKISS,
Deputy Clerk.

47 NORFOLK, VA., *Nov.* 28, 1891.

Not finding the said James Van Vranken, I executed this citation by delivering a copy thereof to James E. Heath, counsel of record for the said James Van Vranken. The said James E. Heath desires me to state on this return that he has not been employed to represent the said James Van Vranken in the Supreme Court of the United States.

R. R. FARR,
U. S. Marshal.
Per J. J. SULLIVAN,
Deputy.

48 Ex parte James Van Vranken, on petition for writ of habeas corpus.

UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

I, M. F. Pleasants, clerk of the circuit court of the United States for the eastern district of Virginia, hereby certify that the foregoing is a true and complete transcript of the record and proceedings in the above-entitled cause as the same remains on the files of my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Norfolk, in said district, this seventeenth day of November, A. D. 1891.

[SEAL.] M. F. PLEASANTS,
Clerk U. S. Circuit Court, Eastern District of Virginia.

49 (Indorsed:) Ex parte James Van Vranken. Appeal from U. S. circuit court, E. D. of Va., to Supreme Court of United States.

(Indorsement on cover:) Case No. 14935. Term No. 347. John F. McGlensey, appellant, vs. James Van Vranken. E. Virginia C. C. U. S. Filed December 5, 1891.

SUPREME COURT, U.S.
FILED
OCT 19 1895
JAMES H. McKENNEY
CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

JOHN F. McGLENSEY, APPELLANT,
v.
JAMES VAN VRANKEN. } No. 70.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

JOHN F. McGLENSEY, APPELLANT,
v.
JAMES VAN VRANKEN. } No. 70.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

BRIEF FOR THE UNITED STATES.

Van Vranken, the defendant in error, was appointed paymaster's clerk in the United States Navy from October 16, 1890 (p. 5). In his letter of acceptance he expressly stipulated to—

> Oblige and subject myself, during my service as paymaster's clerk, to comply with and be obedient to such laws, regulations, and discipline of the Navy as are now in force, or that may be enacted by Congress or established by other competent authority (p. 6).

He took the usual prescribed oath of office and entered upon his duties.

Upon charges and specifications duly framed and filed against him he was tried by a general court-martial, and on the 17th day of August, 1891, he was convicted of wrongfully, knowingly, and willfully disposing of property of the United States intended for the naval service thereof, of misappropriating the same, and of countenancing a fraud against the United States in violation of article 14 of the Articles for the Government of the Navy, and sentenced to be confined in a prison or penitentiary for the period of one year, forfeit certain pay, and to be dishonorably discharged from the service of the United States.

On October 20, 1891, by an order of the circuit court of the United States for the eastern district of Virginia, on proceedings had in that court on the petition of said Van Vranken for a writ of habeas corpus, he was released and discharged from the custody and control of the officer of the Navy having him in charge, and the case was brought on writ of error to this court to review said judgment of the circuit court.

ARGUMENT.

The case, in all of its material features, is identical with that of *Johnson* v. *Sayre* (158 U. S., 109), and must be governed by the principles there announced and enforced.

The opinion of the learned judge who presided in the lower court (pp. 14–17) presents the views on which the judgment of the court was based. But these views, having been already fully considered and disposed of by this court in *Johnson* v. *Sayre*, require no further reply here.

Importance seems to be attached by the judge of the lower court to article 81 of the "Regulations of the Navy, published in 1878," which is recited to be (p. 16)—

> No clerk employed by a pay officer on shore can be considered as attached to the Navy or subject to the Articles of War.

However far this regulation may apply to the case of a private clerk "employed by a pay officer on shore," it can have no sort of application to the case of one who, like Van Vranken, was regularly appointed "paymaster's clerk *in the United States Navy*," who accepted such office, obliging and subjecting himself to comply with and be obedient to the laws, regulations, and discipline of the Navy, and who formally took the oath of office as such officer.

Navy regulations made by the President or subordinates can not contravene the express provisions of the statutes. (*United States* v. *Symonds*, 120 U. S., 47.)

Article 29, Navy Regulations (1893), provides:

> Clerks to pay officers are appointed for a limited period. They are subject in all respects to the same laws and regulations that govern other persons in the naval service.

Article 1200, Navy Regulations (p. 256), provides:

> A pay clerk, assisting a pay officer to settle his accounts, will be allowed pay, but not rations, during the time so employed.

The article 81 quoted and relied on by Judge Hughes in his opinion (p. 16) is not one of the Regulations of the Navy authorized by section 1547, Revised Statutes,

at all. It will not be found in any published copy of United States Navy Regulations. It appears only in an official publication of 1878, entitled "Regulations for the government of the officers of the United States Navy in matters relating to the pay department," and does not purport to have been issued by the Secretary of the Navy, "with the approval of the President," as required by the statute.

But, as already indicated, by whatever authority it was issued, it applies, by its very terms, only to a "clerk *employed* by a pay officer on shore," and obviously no clerk or accountant employed by an officer of the Navy could with any propriety "be considered as attached to the Navy or subject to the Articles of War."

HOLMES CONRAD,
Solicitor-General.

O